

August 30, 1999

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Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
12th Street Lobby, TW-A325  
Washington, DC 20554

Re: Comments  
CC Docket No. 94-102

Dear Ms. Salas:

Enclosed is an original and six copies of our Reply Comments in reply to the CTIA, PCIA, APCO, NENA and NASNA report to the Commission. Please return one filed stamped copy to us in the enclosed self-addressed, stamped envelope. Thank you.

Sincerely,

  
Carl Hilliard

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**AUG 31 1999**

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**In the Matter of**

**Revision of the Commission's Rules  
To Ensure Compatibility With  
Enhanced 911 Emergency Calling  
Systems**

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**CC Docket No. 94-102**

**COMMENTS OF THE  
WIRELESS CONSUMERS ALLIANCE  
CONCERNING THE REPORT TO THE COMMISSION  
BY THE PARTIES TO THE "CONSENSUS AGREEMENT"**

The Wireless Consumers Alliance ("Alliance") submits its comments to the report by the parties to the "Consensus Agreement," which was filed by CTIA, PCIA, APCO, NENA, and NASNA on August 9, 1999 ("Report") in response to the Commission's Public Notice, FCC 99-132 (released June 9, 1999) ("Notice").<sup>1</sup>

It is evident that the Commission's reliance on the parties to the Consensus Agreement to arrive at solutions which would provide wireless consumers with the 911 safety enhancements that the Commission has found to be "critically important" has been misplaced. There are a number of reasons for this failure but the basic problem is the self interest agendas of various parties have been placed before the public interest. The industry leverage in this process has been the threat to resist any changes through

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<sup>1</sup> Despite the fact that the Commission anticipated "that any reports or comments by the parties to the Consensus Agreement will be made available to all other interested parties for review and comment to ensure a complete record" a copy of the Report was not provided to the Alliance.

obfuscation, delay and avoidance unless public-safety dispatch organizations make concessions which include support for other industry agenda items.<sup>2</sup> We see this evidenced in the Report where it is admitted that the industry is resisting the implementation of E911 because it does not like the action taken by the Commission to require the processing of all 911 calls and/or the refusal of the Commission to limit carrier liability.<sup>3</sup>

### **COST RECOVERY MECHANISMS**

“At the request of the parties to the Consensus Agreement, the FCC referred cost recovery issues to the states and local jurisdictions.”<sup>4</sup> Implementation dates for Phase I and Phase II were also set at the request of the same parties “to promote and achieve prompt and timely deployment.”<sup>5</sup> More than a year has elapsed since the date for implementation of Phase I and only a handful of PSAPs are equipped with that service.<sup>6</sup> Yet even today, there is no agreement on what to spend, where to obtain the money and how to ensure that the funds allocated are spent for their intended purposes.<sup>7</sup>

The Report says that the time-consuming process of getting cost-recovery measures adopted by various state legislatures has delayed the provision of E911 services.<sup>8</sup> Approximately half of the states have adopted a wireless surcharge for

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<sup>2</sup> For example, the public-safety dispatch organizations opposed Strongest Signal after being told that the carriers would not be inclined to implement Phase II “early” if Strongest Signal was adopted. Also, note the strenuous support given to the carriers on the issue of limited liability.

<sup>3</sup> Not all carriers have taken this position. For example, Bell Atlantic encourages the donation of used cellular phones which it will reprogram to dial 911 for use by victim protection programs.

<sup>4</sup> Report, page 5.

<sup>5</sup> Nolte, page 2.

<sup>6</sup> Depending on which report is read, the number is either 1% or 7%.

<sup>7</sup> CTIA states that some of the money collected for E911 is not being used for the intended purpose. Appendix C, p. 3.

<sup>8</sup> Page 9 of the Report.

enhancing 911 service. The average surcharge is 72 cents per subscriber per month.<sup>9</sup> This surcharge is apparently intended *only for Phase I* because such amount is clearly inadequate to support the Phase II system(s) proposed by the Consensus Agreement. As an example, the surcharge in Texas is 50 cents per month. A test of TruePosition Phase II equipment has been conducted in Houston, Texas. The 911 network information services manager, John Melcher “said one of the purposes of the Houston test was to determine actual costs of providing E911 service.”<sup>10</sup> Wireless Week reports that the cost of TruePosition equipment is estimated to be \$30,000 per cell.<sup>11</sup> This is consistent with the information in the Petition except that we understand that there is an additional per subscriber, per month charge associated with the use of this equipment. Clearly the 50 cent Texas surcharge was not intended to, and will not, support the cost of a network based Phase II system.

In order to support the deployment of these expensive Phase II network based systems there must be either private investment, such as the case in Houston, or the carriers must be able to offset the cost with incremental revenues from non-emergency location services. The well publicized failures of the Houston test can be expected to scare off any further private investment money. There is also a growing concern on the part of carriers that non-emergency location based services are not going to generate sufficient income to offset the cost of network based Phase II equipment.<sup>12</sup> Thus, the potential of investment based on a return from non-911 services can no longer be anticipated as an aid to construct network based Phase II systems.

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<sup>9</sup> The Milwaukee Journal Sentinel, May 8, 1999, Business Section, p. 1.

<sup>10</sup> Wireless Week, April 26, 1999.

<sup>11</sup> *Id.* A similar system by Cellocate is estimated to cost \$50,000 per cell site.

<sup>12</sup> Land Mobile Radio News, March 12, 1999.

Based on the above information, on June 2, 1999, we filed a petition (“Petition”) to modify section 47 C.F.R. §§ 20.18 (e) & (f) to implement a uniform Phase II system with manageable costs. The Petition also proposed, as APCO does in Appendix A to the Report, that the carriers should recover their own costs (“bill and keep”) from their customers.

We also suggested in earlier comments in this proceeding, and suggest again now, that a surcharge be imposed on the sale of all wireless phones and those funds be made available for the PSAP specifically and only for the purchase of wireless E911 equipment. This would generate the up front funds required to obtain and install the equipment needed by the PSAP.

In sum, the flexibility afforded to the carriers, the PSAPs and state and local authorities by the Commission to agree on a funding mechanism have not produced the promised results. A little over half the states have adopted wireless surcharge legislation for Phase I. It appears that such surcharges may not produce adequate funding for Phase I, let alone Phase II, and, as a practical matter, may not be workable.<sup>13</sup> The Commission must conclude that the cost recovery methods it adopted are insufficient.

### **CHOICE OF TECHNOLOGY**

The Commission’s decision to rely on the “expertise of the parties” to the Consensus agreement to make technology choices has also failed to yield the expected results. The carriers and public-safety dispatch agencies disagree over who makes the technology choice for deployment of Phase II equipment. As APCO states, carriers who have complete control over the selection of technology “have little or no incentive to

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<sup>13</sup> Report, page 5.

select the most cost-effective approach.”<sup>14</sup> And “a carrier that wants to avoid or delay compliance need only propose a location technology with projected costs that far exceed the available cost-recovery funds.”<sup>15</sup> This is but another example of industry threats to resist any choices not to its liking through obfuscation, delay and avoidance despite the harm to the public interest.

The polyglot of incompatible systems emerging from this process will not provide the consumer with the assurance that E911 service will be available on a uniform basis as the consumer roams from system to system or even within portions of the consumer’s home system. Having to equip the PSAP with various pieces of incompatible equipment to cover multiple systems to handle various E911 formats is impractical and an unacceptable waste. We respectfully submit that the Commission should mandate the changes set forth in the Petition and establish a uniform basis for providing E911 service to the public.

## **OTHER ISSUES**

### **Obfuscation, Delay and Avoidance**

*“The lack of liability protection for wireless carriers has been and may continue to be one of the impediments to implementing E9-1-1 Phase I services.”<sup>16</sup> (Emphasis added).*

The carriers have extensively promoted their services to consumers on the basis of access to emergency help. The wealth of evidence in the record shows that well over half of the subscribers to wireless service were persuaded to secure a wireless phone for safety and security reasons. Why should carriers be immune if they fail to provide the

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<sup>14</sup> Addendum A, page 3.

<sup>15</sup> *Id.*

service they have used as their primary sales tool? The argument in the Report that the Commission's requirement of 911 service to non-subscribed phones changes the balance is non-sense. The Los Angeles County E911 Wireless Trial report, filed with the Commission last March, disclosed that only one call was received from a non-subscribed phone during the entire test. Furthermore, the overriding fact is that the public's airwaves are to be used to promote public safety and that is an obligation shared by all licensees of the spectrum.<sup>17</sup>

The Commission has heard and considered all of these arguments before and spoken clearly stating "[w]e conclude that it is unnecessary to exempt providers of E911 service from liability for certain negligent acts".<sup>18</sup> Wireless carriers do not like this decision but it should not, and does not, excuse them from compliance with the Commission's orders. We respectfully suggest that carriers be placed on notice that continued foot dragging with respect to implementation of E911 may result in fines and/or revocation of their licenses.

### **LEC Services**

The argument in the Report that implementation of E911 service has been delayed because LECs have CAMA trunks deployed which are incapable of passing the information required to the PSAP has little merit. The upgrade of CAMA to Feature Group D is a software update which can be easily accomplished. Most wireless carriers have extensively marketed and provided Caller ID services which requires the switch upgrade necessary to pass Phase I caller telephone information to the PSAPs. CAMA

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<sup>16</sup> Report, page 3.

<sup>17</sup> As Commissioner Tristani reminded the wireless industry at the CTIA '99 convention, "the Commission will always have its critical objective of making sure spectrum is used for the benefit of all." Mobile Communications Report, 2/22/99.

trunks are being rapidly changed to Feature Group D because of the demand for numbers, area code splits and overlays within the LATA. Therefore, these LEC trunks have the capability to carry the enhanced data to the PSAP required for Phase I and II. For these reasons, we believe that the CAMA excuse relates to a small portion of the population. Even where an upgrade is required, Feature Group D software is usually purchased on a LATA basis and the central office charge is minimal. Thus, there should be no barriers to securing the necessary upgrades and we conclude that this “excuse” is just that – not a reason.

### **The dearth of discussion concerning Phase II in the Report**

There is very little discussion of the status of Phase II in the Report. Instead the parties to the Report have concentrated on what little there is to report concerning “progress” towards Phase I. As we said in the Petition, based on the results of the LA test, our sense of the situation is that Phase I cell sector location information is of little value.<sup>19</sup> Thus, we suggest that the Commission’s focus should be on Phase II. There is nothing in the Report that indicates that the Phase II deadline can or will be met. Indeed, there is near gridlock concerning every necessary ingredient to the deployment of this critical service.

## **CONCLUSION**

The Commission’s Phase I and Phase II decision was based on the Consensus Agreement. The parties to the Consensus Agreement represented to the Commission and the public that they would be responsible for the technology choices and funding mechanism to implement Phase I and II within specific time limits. There is, in fact, no

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<sup>18</sup> Second Report and Order, § 99.


<sup>19</sup> See Land Mobile News, 3/12/99, which reports that the same conclusion has been reached by others.



consensus and valuable time has been lost in reaching the E911 goals required by the public interest. Commission action is clearly necessary.

We submit that the Commission must (1) establish a standard format and content for E911 information to be delivered by the carrier to all PSAPS and (2) establish a method to collect funds which will be made available to PSAPs to purchase the necessary equipment for E911 service. We suggest delivery of eGPS information by the carrier as the most reasonable solution to meet this goal as set forth in more detail in our Petition. How the delivery of standard format eGPS information is accomplished should be left to the carriers. We support APCO's "bill and keep" proposal for reimbursement of carrier costs. We also suggest that a surcharge be made at the time of purchase of a wireless telephone which to be placed in a fund specifically earmarked for the purchase of PSAP E911 equipment.

Respectfully Submitted,  
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June 7, 1999

**CERTIFICATE OF SERVICE**

I, Ed DeJesus, hereby certify that on this 30<sup>th</sup> day of August, 1999, copies of the foregoing Reply Comments of Wireless Consumers Alliance, Inc., in CC Docket No. 94-102 were served by mail or courier\* or fax\*\* on the following:

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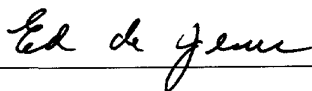
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August <sup>30<sup>th</sup></sup>\_\_\_\_, 1999

  
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